

OVERVIEW OF THE PROCESS TO AMEND THE VERMONT CONSTITUTION

BETSYANN WRASK, LEGISLATIVE COUNSEL, OFFICE OF LEGISLATIVE COUNCIL

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CONSTITUTIONAL PROPOSALS INTRODUCED SO FAR IN THE 2019-2020 BIENNIUM

- PR.1: Governor; four-year term of office
- PR.2: Clarifying the prohibition on slavery and indentured servitude
- PR.3: Right to privacy
- PR.4: Equality of rights
- PR.5: Right to personal reproductive liberty
- PR.6: Senators; four-year term of office

A BRIEF HISTORY OF THE VT. CONST. AMENDMENT PROCESS

EARLY VT. CONST. AMENDMENTS BY CONSTITUTIONAL CONVENTION

- 1777 Vt. Const. Ch. II, § XLIV provided for a 13-member Council of Censors – elected statewide once every seven years to serve one-year terms – to call by a 2/3 vote a constitutional convention to meet within two years of their sitting “if there appears to them an absolute necessity of amending any article of this constitution which may be defective[.]”
 - While the Vt. Const. established the Council, it did not establish the structure of the convention.
 - Conventions consisted of one delegate from each town.
- The Council of Censors proposed a variety of amendments that were adopted in convention as the 1786 Vt. Const., making Vermont the first state to amend its constitution through a constitutionally-described process.
- The Council of Censors proposed more amendments for a subsequent convention that resulted in the 1793 Vt. Const., which is the core of our current Vt. Const.
- See “Records of the Council of Censors of the State of Vermont” by Paul S. Gillies and D. Gregory Sanford, Sec. of State’s Office, 1991.

1870: REPEAL OF COUNCIL OF CENSORS; ADOPTION OF LEG.-
PROPOSED AMENDMENTS UNDER A 10-YEAR TIME LOCK

1974: TIME LOCK REDUCED TO EVERY OTHER BIENNIUM

- 1870: The Council of Censors proposed constitutional amendments until the Convention of 1870, which abolished the Council of Censors and replaced it with amendments proposed by the General Assembly. Under this process, amendments:
 - Could only be proposed by the Senate once every 10 years;
 - Had to be adopted by the General Assembly in the “proposing” biennium, and then again by the next General Assembly in the subsequent biennium; and
 - Required final ratification by the voters.
- 1974: Reduced the time lock so that the Senate can propose amendments every other biennium.

TEXT OF OUR CURRENT VT. CONST. AMENDMENT PROCESS

VT. CONST. CH. II, § 72 [AMENDING CONSTITUTION]

“At the biennial session of the General Assembly of this State which convenes in A.D. 1975, and at the biennial session convening every fourth year thereafter, the Senate by a vote of two-thirds of its members, may propose amendments to this Constitution, with the concurrence of a majority of the members of the House of Representatives with the amendment as proposed by the Senate. A proposed amendment so adopted by the Senate and concurred in by the House of Representatives shall be referred to the next biennial session of the General Assembly; and if at that last session a majority of the members of the Senate and a majority of the House of Representatives concur in the proposed amendment, it shall be the duty of the General Assembly to submit the proposal directly to the voters of the state. Any proposed amendment submitted to the voters of the state in accordance with this section which is approved by a majority of the voters voting thereon shall become part of the Constitution of this State.

“Prior to the submission of a proposed amendment to a vote in accordance with this section, public notice of the proposed amendment shall be given by proclamation of the Governor.

“The General Assembly shall provide for the manner of voting on amendments proposed under this section, and shall enact legislation to carry the provisions of this section into effect.”

SUMMARY OF THE AMENDMENT PROCESS: SENATE IN “PROPOSING” BIENNIUM

- Senate proposal. Amendments can only be proposed by the Senate, and only every other biennium. Vt. Const. Ch. II, § 72.
 - The 2019-2020 biennium is one in which Senators may propose amendments.
- Referral to committee. A proposal is introduced and referred to the committee of jurisdiction. Senate Rule 85.
- Senate amendments. If voted out of committee, the Senate may amend a proposal by majority vote. Senate Rule 80.
- Senate vote. Senate must approve a proposal (as amended, if applicable) in this biennium by “two-thirds of its members[.]” Vt. Const. Ch. II, § 72.
 - I.e., at least **20 Senators** must approve.

SUMMARY OF THE AMENDMENT PROCESS: HOUSE IN “PROPOSING” BIENNIUM

- Referral to committee. A proposal approved by the Senate is referred to the House’s committee of jurisdiction. House Rule 51a.
- Public hearing. If the committee considers a proposal, the committee is required to conduct a public hearing prior to voting on it. House Rule 51a.
- House vote. House must concur with the proposal by a “majority of the members of the House of Representatives[.]” Vt. Const. Ch. II, § 72.
 - I.e., at least **76 Representatives** must approve.
- No amendments. Vt. Const. Ch. II, § 72 requires the House to concur “with the amendment as proposed by the Senate.”
 - As stated in 1971, AG Op. No. 656-F, the House must concur with – and cannot amend – the Senate proposal.

INTERIM PUBLICATION

- 17V.S.A. § 1840 requires:
 - The Secretary of State, with 90 days following adjournment *sine die*, to publish a proposal adopted by both chambers and a summary thereof in at least two newspapers having general circulation in the State, once each week for three successive weeks.
 - The proposal to be published on the websites of the General Assembly and of the Office of the Secretary of State for the same duration as the newspaper publications.

SUMMARY OF THE AMENDMENT PROCESS: SENATE IN THE SUBSEQUENT BIENNIUM

- Senate action. If a proposal has been adopted by both chambers in the previous biennium, the proposal is to be printed in the Senate calendar in the first year of the subsequent biennium upon direction given by the Senate Committee on Rules. Senate Rule 83.
- Senate vote. The Senate must concur with the proposal by a “majority of the members of the Senate[.]” Vt. Const. Ch. II, § 72.
 - I.e., at least **16 Senators** must approve.

SUMMARY OF THE AMENDMENT PROCESS: HOUSE IN THE SUBSEQUENT BIENNIUM

- Referral to committee. The proposal is referred to the committee of jurisdiction. House Rule 51a.
- Public hearing. If the committee considers a proposal, the committee is required to conduct a public hearing prior to voting on it. House Rule 51a.
- House vote. House must concur with the proposal by a “majority of the House of Representatives[.]”
 - Because this language is not dependent upon House *membership*, it indicates it means a majority of a House *quorum*.
 - Under Vt. Const. Ch. II, § 14, a majority of House members (76) constitutes a quorum.
 - I.e., at least a **majority of House members present and constituting a quorum** must approve. For ex., if only 76 House members are present to constitute a quorum, at least 39 of them must approve. If there are 100 House members present, 51 must approve, etc.

GOVERNOR PROCLAMATION; PUBLICATION

- Governor proclamation. If passed by both chambers in both bienniums, the Governor must provide public notice of the proposed amendment by proclamation, prior to the vote. Vt. Const. Ch. II, § 72.
- Publication.
 - The Secretary of State must also publish the proposal and a summary thereof in at least two newspapers having general circulation in the State, once each week for three successive weeks.
 - The proposal must also be published on the websites of the General Assembly and of the Office of the Secretary of State for the same duration as the newspaper publications. 17V.S.A. § 1844.

VOTER RATIFICATION

- Voters must ratify a proposed amendment by majority vote. Vt. Const. Ch. II, § 72.
- This vote is required to be held at the general election. 17 V.S.A. § 1842.

FUN VT. CONST. FACTS!

- According to the National Conference of State Legislatures, at around 8,500 words, Vermont has the shortest constitution.
- The 1793 Vt. Const. has had **54** articles of amendment, the last one being 2010's amendment to Vt. Const. Ch. II, § 42, which allows 17-year-olds to vote in the primary if they'll be 18 by the general election and meet all other voting qualifications.
 - 2008, PR. 5 was amended and adopted by the Senate on 4/17/08 and concurred in by the House on 4/29/08, very near the end of the 2007-2008 "proposing" biennium.
- Vt. Const. Ch. I, Art. 7 provides that "the community hath an induitable, unalienable, and infeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal."
 - 1965 AG Op. No. 27 opined that this provision allowed the General Assembly to call a constitutional convention for the purpose of proposing constitutional amendments, which would need to be submitted to the people for ratification.

PROPOSED AMENDMENTS NEVER RATIFIED

- Judicial advisory opinions (1880)
- Reading/writing requirements for voter eligibility (1921)
- Allowing Leg. to provide for compulsory voting at elections (1921)
- Allowing Leg. to regulate and restrict outdoor advertising (1931)
- Voter initiative (proposing statutory and constitutional amendments) and referendum (approving or rejecting statutes) (1975)
- April 30 deadline for any legislative adjournment (1991)

THANK YOU!
